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Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors

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FEDERAL COURT (PUTRAJAYA) — APPEAL NO 01–(F)–12 OF 2008(A)
RICHARD MALANJUM CJ (SABAH AND SARAWAK), AUGUSTINE PAUL AND ZULKEFLI FCJJ
24 MARCH 2009

C

Election — Petition — Allegation of corrupt practice — Bribery — Whether petition contained material facts as required by r 4(1)(b) and (4)(3) Election of the Petition Rules 1954 — Whether bribery made out — Election Offences Act 1954 ss 10(c), 32(c)

D

Words and Phrases — 'briefly' — Election Petition Rules 1954 r 4(1)(b)

E

Words and Phrases — 'concise' — Election Petition Rules 1954 r 4(4)(3)

Words and Phrases — 'induce' — Election Offences Act 1954 s 10(c)

F

The first respondent, the BN candidate for the state seat of Kubu Gajah, Perak was declared the duly elected candidate with a majority of 66 votes. The petitioner, a PAS candidate, filed a petition pursuant to s 34(a) of the Election Offences Act 1954 ('Act') on the grounds that the first respondent had committed four offences of bribery under s 10(c) of the Act and two offences of treating under s 8 of the Act. The High Court dismissed the petition and the petitioner appealed to the Federal Court. At the appeal, the petitioner's counsel proceeded only with the first three grounds in the petition. These grounds were based on three complaints related to promises and gifts made in return for votes. The petitioner's appeal was mainly against the ruling of the High Court that the petition did not contain material facts as required by r 4(1)(b) and (4)(3) of the Election Petition Rules 1954 ('Rules').

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Held, dismissing the appeal with costs:

(1) The use of the word 'shall' in the rr 4(1)(b) and 4(4)(3) of the Rules means that the requirements of the two rules are mandatory. The extent to which the facts and grounds relied upon must be set out in a petition is explained by the use of the words 'briefly' in r 4(1)(b) and 'concise' in r 4(4)(3). The scope and width of these two words must be read with the requirement of r 4(1)(b) that the facts and grounds relied on must be such as to '…sustain the prayer' and '…on which the petitioners rely' as stipulated in r 4(4)(3). A prayer can be sustained only by a statement of the facts necessary to establish it — facts on which a petitioner will rely. Thus there must be sufficient facts to constitute a cause of action as they will form the basis of the prayer. It is therefore abundantly clear that the facts to be pleaded pursuant to r 4(1)(b) and r 4(4)(3) must be such as to make out a case for the petitioner. In other words all the material facts must be pleaded though a concise statement of them will suffice. Failure to comply with this mandatory requirement will render the petition defective (see *Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729 (referred)). The facts that must be pleaded will depend on the election offence alleged to have been committed and the elements that are required to be established in respect of it (see paras 8–10).

(2) In the instant case, the three grounds in the petition fell under s 32(c) read with s 10(c) of the Act. The facts to be pleaded by the petitioner in this case would thus be the elements that constitute the offence of bribery within the meaning of s 10(c). Under s 10(c), the making of any gift, loan, offer etc '… to or for any person …' means that it must be made to a particular person. The purpose of making the gift, loan, offer etc is determined by the use of the word 'induce'. The making of the gift, loan, offer etc must be for the purpose of changing the mind of the voters who have been identified. The question of inducing a person to do something simply cannot arise if he has already decided to do the very thing (see paras 11–12 & 16).

(3) The first complaint (first ground) which related to a promise made in return for votes was defective as it did not set out the full text of what the first respondent said. It only identified a part of it, and the part left out could well have neutralised the part that had been pleaded. The second complaint (second ground), did not state that the gift (sacks of rice) was made in return for votes unlike the facts pleaded in the other two complaints. The third complaint (third ground) related to a promise of public auction in return for votes made to a crowd of about 300 people in front of 37 named persons. Such a promise did not

amount to a corrupt practice. *Re Pengkalan Kota By-Election Teoh Teik Huat v Lim Kean Siew & Anor* [1981] 1 MLJ 265 (referred) (see para 17).

(4) In the instant case, all the three complaints had a common defect. The promise or gift, was not made to any particular voter or voters but to a crowd and no distinction was made between the voters who were favourably inclined towards the first respondent and those who were not. Thus, the facts pleaded in respect of the three complaints did not disclose the commission of an offence under s 10(c) of the Act. The result was that they did not comply with the requirements of r 4(1)(b) and (4)(3) of the Rules since the facts pleaded were insufficient to sustain the prayer *Ghasi Ram v Dal Singh* AIR 1968 SC 1191 (referred) (see para 18).

[Bahasa Malaysia summary

Responden pertama, calon BN untuk kerusi daerah Kubu Gajah, Perak telah diisytiharkan calon yang dipilih dengan majoriti 66 undian. Pempetisyen, calon PAS, telah memfailkan petisyen menurut s 34(a) Akta Kesalahan Pilihan Raya 1954 ('Akta') atas alasan-alasan bahawa responden pertama telah melakukan empat kesalahan rasuah di bawah s 10(c) Akta dan dua kesalahan menjamu di bawah s 8 Akta. Mahkamah Tinggi telah menolak petisyen itu dan pempetisyen telah merayu ke Mahkamah Persekutuan. Semasa rayuan, peguam pempetisyen telah mengemukakan hanya tiga alasan pertama dalam petisyen itu. Alasan-alasan tersebut berdasarkan tiga aduan berkaitan janji dan hadiah yang diberikan untuk mendapat undi. Rayuan pempetisyen adalah terutamanya terhadap keputusan Mahkamah Tinggi bahawa petisyen itu tidak mengandungi fakta material seperti yang dikehendaki oleh k 4(1)(b) dan (4)(3) Kaedah-Kaedah Petisyen Pilihan Raya 1954 ('Kaedah').

Diputuskan, menolak rayuan dengan kos:

(1) Kegunaan perkataan 'shall' dalam k 4(1)(b) dan k 4(4)(3) Kaedah bermaksud bahawa keperluan kedua-dua peruntukan itu adalah mandatori. Setakat mana fakta dan alasan tersebut digunakan yang hendak dinyatakan dalam petisyen adalah dijelaskan dengan penggunaan perkataan-perkataan 'briefly' dalam k 4(1)(b) dan 'concise' dalam k 4(4)(3). Skop dan luas kedua-dua perkataan tersebut hendaklah dibaca dengan keperluan k 4(1)(b) bahawa fakta dan alasan yang digunakan hendaklah sedemikian rupa sehingga '… sustain the prayer' and '… on which the petitioners rely' seperti yang dinyatakan dalam k 4(4)(3). Permohonan boleh dikekalkan hanya oleh penyataan fakta yang perlu untuk membuktikannya — fakta yang mana

pempetisyen menyandar. Oleh itu amat jelas bahawa fakta untuk diplidkan menurut k 4(1)(b) dan k 4(4)(3) mestilah sesuatu yang membuktikan kes pempetisyen. Dalam erti kata lain kesemua fakta material hendaklah diplidkan meskipun kenyataan ringkas dan padat tentangnya mencukupi. Kegagalan untuk mematuhi keperluan mandatori ini akan mengakibatkan petisyen itu cacat (lihat *Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 429 (dirujuk)). Fakta yang perlu diplidkan bergantung kepada kesalahan yang dikatakan telah dilakukan dan elemen-elemen yang dikehendaki untuk dibuktikan berkaitannya (lihat perenggan 8–10).

(2) Dalam kes ini, ketiga-tiga alasan dalam petisyen itu terangkum di bawah s 32(c) dibaca dengan s 10(c) Akta. Fakta-fakta untuk diplidkan oleh pempetisyen dalam kes ini merupakan elemen-elemen yang membentuk kesalahan rasuah dalam maksud s 10(c). Di bawah s 10(c), memberikan apa-apa pemberian, pinjaman, tawaran dll '… to or for any person …' bermaksud bahawa ia hendaklah dibuat kepada seseorang. Tujuan memberikan hadiah, pinjaman, tawaran dll ditentukan oleh penggunaan perkataan 'induce'. Memberikan pemberian, pinjaman, tawaran dll hendaklah bertujuan untuk menukar fikiran pengundi-pengundi yang dikenalpasti. Persoalan mempengaruhi seseorang untuk membuat sesuatu tidak boleh timbul begitu sahaja jika dia telahpun memutuskan untuk berbuat sedemikian (lihat perenggan 11, 12 & 16).

(3) Dalam kes ini, aduan pertama (alasan pertama) yang berkaitan dengan janji yang dibuat untuk mendapat undi adalah cacat kerana ia tidak menyatakan teks penuh tentang apa yang dikatakan oleh responden pertama. Ia hanya mengenalpasti sebahagiannya, dan bahagian yang tertinggal mungkin telah meneutralkan bahagian yang telah diplid. Aduan kedua (alasan kedua), tidak menyatakan bahawa hadiah (beberapa guni beras) telah dibuat untuk mendapat undian bukan seperti fakta-fakta yang diplidkan dalam dua aduan lain. Aduan ketiga (alasan ketiga) berkaitan janji lelongan awam untuk mendapat undi yang telah dibuat kepada lebih kurang 300 orang di hadapan 37 orang penama. Janji tersebut tidak membentuk amalan rasuah (lihat perenggan 17); *Re Pengkalan Kota By-Election Teoh Teik Huat v Lim Kean Siew & Anor* [1981] 1 MLJ 265 (dirujuk).

(4) Dalam kes ini, kesemua tiga aduan tersebut mempunyai kecacatan yang sama. Janji atau hadiah, tidak dibuat kepada mana-mana pengundi tetapi kepada orang ramai dan tiada perbezaan dibuat antara pengundi-pengundi yang lebih cenderung kepada responden pertama dan mereka yang tidak. Oleh itu, fakta-fakta yang diplidkan berkaitan ketiga-tiga aduan tersebut tidak menunjukkan perlakuan kesalahan di bawah s 10(c) Akta. Akibatnya mereka tidak mematuhi keperluan

A k 4(1)(b) dan (4)(3) Kaedah memandangkan fakta-fakta yang diplidkan tidak mencukupi untuk mengekalkan permohonan (lihat perenggan 18); *Ram v Dal Singh* AIR 1968 SC 1191 (dirujuk).]

Notes

B For cases on allegation of corrupt practice, see 6 *Mallal's Digest* (4th Ed, 2007 Reissue) paras 1992–2000.

Cases referred to

Dr Shafie bin Abu Bakar v Pegawai Pengurus Pilihanraya N26 – Mohd Zakri bin Hj Hussin & Ors & Other Petitions (No 2) [2005] 2 MLJ 149, HC (refd)

C

Gan Joon Zin v Fong Kui Lun & Ors [2004] 4 CLJ 729, FC (refd)

Ghasi Ram v Dal Singh AIR 1968 SC 1191, SC (refd)

Kalya Singh v Genda Lal AIR 1975 SC 1634 (refd)

D *Patau Rubis v Patrick Uren & Anor* [1984] 2 CLJ (Rep) 348 (refd)

Pengkalan Kota By-Election Teoh Teck Huat Re v Lim Kean Siew [1981] 1 MLJ 265, HC (refd)

Wan Daud bin Wan Jusoh v Mohamed bin Haji Ali and other cases [1988] 2 MLJ 384, HC (refd)

E

Legislation referred to

Election Offences Act 1954 ss 8, 10(c), 32, 32(c), 34(a)
Election Petition Rules 1954 r 4(1)(b), (4)(3)
Representation of the People Act 1951 [India] s 123(1)

F

Appeal from: Election Petition No 26–PP–1 of 2008 (High Court, Ipoh)

Mohamed Hanipa bin Maidin (Aminuddin bin Zulkipli, Zulqarnain bin Lukman, Zulmi bin Sabri and Yusnita bt Yusuf with him) (Zainul Rijal Talha & Amir) for the appellants.

G

Mohd Hafarizam bin Harun (Badrul Hishah bin Abd Wahap and Shahhir bin Abd Razak with him) (Ong-Hanim & Badrul) for the respondents.

H **Augustine Paul FCJ:**

INTRODUCTION

[1] This appeal relates to an election petition which was dismissed by the I High Court.

[2] In the General Election held on 8 March 2008 the first respondent was the Barisan Nasional candidate for the state seat of Kubu Gajah, Perak. He was declared as the candidate duly elected with a majority of 66 votes. The

petitioner was the candidate for Parti Islam Se Malaysia for the seat. He filed the petition pursuant to s 34(a) of the Election Offences Act 1954 ('the Act') on the grounds that the first respondent had committed four offences of bribery under s 10(c) of the Act and two offences of treating under s 8 of the Act. The petition was dismissed by the High Court. During the hearing of the appeal learned counsel for the appellant said that he is proceeding only with the first three grounds in the petition.

[3] The three grounds in the petition relied upon by the appellant before us are as follows:

(1) Paragraph 4.1.1 of the petition
(This ground shall hereafter be referred to as the first complaint).

4.1.1 PENYOGOKAN (Seksyen 10(c) Akta Kesalahan Pilihan Raya 1954)

(A) Pempetisyen kamu menyatakan bahawa perbuatan rasuah telah dilakukan oleh Responden Pertama sendiri semasa pilihan raya tersebut dengan memberikan janji kepada pengundi-pengundi berdaftar di dalam Dewan Undangan Negeri N 06 Kubu Gajah (selepas daripada ini akan dirujuk sebagai DUN tersebut) bagi mendapatkan undi pengundi-pengundi tersebut yang mana ianya bercanggah dengan Seksyen 10(c) dibaca bersama Seksyen 32(c) Akta Kesalahan Pilihan Raya 1954. Butir-butirnya adalah seperti berikut:-

BUTIRAN FAKTA

i. Dalam melakukan rasuah tersebut, pada lebih kurang pukul 5.00 hingga 7.00 petang pada 4/3/2008 Responden Pertama telah berkempen di perkarangan rumah kediaman seorang lelaki India bernama Kandasamy a/l Ramasamy yang beralamat di No 340 Kg Lembah Keluang, Kubu Gajah, 34130 Selama, Perak Darul Ridzuan, dihadapan seramai lebih kurang 50 hingga 100 orang pengundi berdaftar dalam bahagian pilihan raya N 06 Kubu Gajah, dengan mengatakan, '*…undi kasi Barisan Nasional menang, apa-apa mintak kita boleh kasi'. Sambil mengetuk dengan keras sebuah meja dihadapannya, dengan mengatakan 'Sumpah!'*. Kata-kata Responden Pertama tersebut telah diucapkan dihadapan orang ramai termasuk penama-penama berikut:- (This was followed by the names and NRIC numbers of 37 persons).

(2) Paragraph 4.1.2 of the petition
(This ground shall hereafter be referred to as the second complaint).

A 4.1.2 PENYOGOKAN (Seksyen 19(c) Akta Kesalahan Pilihan Raya 1954

(B) Pempetisyen kamu menyatakan bahawa perbuatan rasuah telah dilakukan semasa pilihan raya tersebut oleh ejen Responden Pertama dengan pengetahuan dan persetujuan Responden Pertama B dengan memberikan pemberian untuk mendapatkan undi pengundi-pengundi tersebut di DUN tersebut yang mana perbuatan rasuah tersebut bercanggah dengan Seksyen 10(c) dibaca bersama Seksyen 32(c) Akta Kesalahan Pilihan Raya 1954 sebagaimana butiran berikut:

C

BUTIRAN FAKTA

i. Dalam melakukan rasuah tersebut, pada lebih kurang pukul 5.00 hingga 7.00 petang pada 4/3/2008, bertempat di perkarangan sebuah rumah kediaman seorang lelaki India yang D dikenali sebagai Kandasamy a/l Ramasamy dan beralamat di No 340, Kampung Lembah Kluang, 3410 Selama, Perak, seorang petugas dan ejen Responden Pertama yang bernama Gopal a/l Subramaniam telah menyebabkan lapan puluh (80) kampit beras seberat lima (5) kilogram setiap satu E diagih-agihkan kepada hadirin yang berada di majlis kempen tersebut. Pengagihan tersebut berlaku dalam kehadiran Responden Pertama tersebut dan ketika petugas dan ejen Responden Pertama tersebut mempengerusikan majlis kempen Responden Pertama tersebut. Pengagihan kampit-kampit beras F tersebut dilakukan di hadapan khalayak ramai termasuk penama-penama berikut:

(This was followed by the names and NRIC numbers of 37 persons).

G (3) Paragraph 4.1.3 of the petition

(This ground shall hereafter be referred to as the third complaint).

4.1.3 PENYOGOKAN (Seksyen 10(c) Akta Kesalahan Pilihan Raya 1954)

H (C) Pempetisyen kamu menyatakan bahawa perbuatan rasuah telah dilakukan oleh Responden Pertama sendiri semasa pilihan raya tersebut dengan memberikan janji kepada pengundi-pengundi berdaftar di dalam DUN tersebut bagi mendapatkan undi pengundi-pengundi tersebut yang mana ianya bercanggah dengan I Seksyen 10(c) dibaca bersama Seksyen 32(c) Akta Kesalahan Pilihan Raya 1954. Butir-butirnya adalah seperti berikut:

BUTIRAN FAKTA

i. Dalam melakukan rasuah tersebut, pada lebih kurang pukul

5.00 hingga 7.00 petang pada 28/02/2008, Responden Pertama telah berkempen di Kuil Seri Muthumariaman Ladang Hibernia, Jalan Taiping Kubu Gajah, 34130 Selama, Perak, dihadapan lebih kurang 300 orang pengundi berdaftar dalam bahagian pilihan raya N06 Kubu Gajah, Perak dengan mengatakan: 'Kalau saya menang, janji akan beri bantuan baik pulih kuil', dan 'minta undi BN, kalau menang, bagi bangunan sekolah di kawasan Selama'. Kata-kata tersebut telah diucapkan oleh Responden Pertama di hadapan pengundi-pengundi di mana di antara mereka adalah seperti berikut: (this was followed by the names of NRIC numbers of 37 persons).

[4] At the hearing in the High Court the learned judge struck off the petition against the second and third respondents on the application of their counsel. The first respondent raised three preliminary objections and proceeded with only two. They are as follows:

(i) Pempetisyen telah gagal mematuhi kehendak k 15 Kaedah-Kaedah Petisyen Pilihanraya 1954 berdasarkan alasan-alasan bahawa notis pengemukaan petisyen dan petisyen dengan sengaja tidak diserahkan oleh pempetisyen dalam tempoh 15 hari dari tarikh pemfailan petisyen;

(ii) Pempetisyen telah gagal mematuhi kehendak kaedah 4(4) Kaedah-Kaedah Petisyen Pilihanraya 1954 berdasarkan alasan bahawa petisyen tersebut tidak berasas kerana mana-mana alasan sepertimana yang diperuntukkan oleh s 32 Akta Kesalahan Pilihanraya 1954 (Akta 5).

[5] The first objection was dismissed by the learned judge. With regard to the second objection the learned judge referred to cases such as *Patau Rubis v Patrick Uren & Anor* [1984] 2 CLJ (Rep) 348, *Wan Daud bin Wan Jusoh v Mohamed bin Haji Ali and other cases* [1988] 2 MLJ 384 and *Dr Shafie bin Abu Bakar v Pegawai Pengurus Pilihanraya N26 – Mohd Zakri bin Hj Hussin & Ors & Other Petitions (No 2)* [2005] 2 MLJ 149 and took the view that the petition must contain the material facts and sufficient particulars of the complaints pursuant to r 4(1)(b) and r 4(4)(3) of the Election Petition Rules 1954 ('r 4(1)(b) and r 4(4)(3)' respectively). He then considered whether these requirements have been complied with in the pleading of, inter alia, the three complaints in the following terms:

[1] First complaint

Rumusan

Fakta material yang tidak dijelaskan ialah:

— siapakah 50-100 orang pengundi berdaftar itu.

— tidak seorang pun dari pengundi-pengundi itu dinamakan.

— dalam aduan dan fakta perkataan pengundi dan orang ramai digunakan bersilihganti. Adakah mereka ini pengundi ataupun hadirin sahaja dan bukannya pengundi.

— adakah mereka (sekiranya mereka pengundi berdaftar) pengundi berdaftar di DUN N 06 Kubu Gajah.

— nama yang dinyatakan dalam aduan hanyalah sebahagian daripada orang ramai yang hadir. Tidak dinyatakan adakah 37 penama ini pengundi berdaftar di N 06.

— tanpa kenyataan penuh yang diucapkan diplidkan, ada kemungkinan ucapan itu dipetik di luar konteks.

[2] Second complaint

Rumusan

— siapakah hadirin ini dan adakah mereka pengundi berdaftar di DUN N 06. Tiada nama diberikan untuk menunjukkan mereka adalah pengundi di DUN tersebut.

— 37 penama yang dinamakan hanyalah khalayak ramai, tidak dinyatakan adakah mereka ini pengundi berdaftar di DUN N 06 dan adakah mereka telah diberikan beras tersebut.

— di dalam aduan tersebut pengundi tetapi dalam butiran fakta disebut sebagai hadirin. Ini menimbulkan keraguan adakah mereka ini pengundi ataupun hadirin sahaja.

[3] Third complaint

Rumusan

Fakta material tidak dinyatakan:

— siapakah 300 (atau sebahagiannya) yang dikatakan adalah pengundi berdaftar di DUN N 06.

— 37 penama yang dikatakan pengundi itu, adakah mereka pengundi berdaftar di DUN N 06.

— walaupun dalam aduan ini 37 penama dikatakan adalah pengundi tetapi dalam aduan 4.1.1 dan 4.1.2 penama yang sama ini tidak disebut sebagai pengundi sebaliknya dinamakan sebagai hadirin sahaja. Ini adalah percanggahan yang material.

— kenyataan penuh tidak diplidkan.

[6] The learned judge then referred to *Re Pengkalan Kota By-Election Teoh Teck Huat v Lim Kean Siew* [1981] 1 MLJ 265 and ruled that the second objection raised by the first respondent has merit and, accordingly, dismissed the petition with costs. This appeal is by the petitioner.

[7] The thrust of the appeal before us is against the ruling of the High Court that the petition did not contain the material facts as required by r 4(1)(b) and r 4(4)(3). It thus becomes necessary to first consider the requirements of the two rules. They read as follows:

Rule 4(1)(b)

4 (1) An election petition shall contain the following statements:

(a) ...

(b) it shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

Rule 4(4)(3)

4 (4) The following form, or one to the like effect, shall be sufficient:

(1) ...

(2) ...

(3) And your petitioners say that (here state the concise facts and grounds on which the petitioners rely).

[8] The use of the word 'shall' in the rules means that the requirements of the two rules are mandatory. The extent to which the facts and grounds relied upon must be set out in a petition is explained by the use of the words 'briefly' in r 4(1)(b) and 'concise' in r 4(4)(3). The word 'briefly' is the adverb of 'brief' which is defined in *Webster's New World Dictionary* as, inter alia:

a concise statement of the main points of a law case, usually filed by counsel for the information of the court

[9] And the word 'concise' as:

brief and to the point; short and clear. Concise implies the stating of much in few words, by removing all superfluous or expanded details.

[10] The scope and width of these two words must be read with the requirement of r 4(1)(b) that the facts and grounds relied on must be such as to '… sustain the prayer' and '… on which the petitioners rely' as stipulated

in r 4(4)(3). A prayer can be sustained only by a statement of the facts necessary to establish it. They will be the facts on which a petitioner will rely. Thus there must be sufficient facts to constitute a cause of action as they will form the basis of the prayer. It is therefore abundantly clear that the facts to be pleaded pursuant to r 4(1)(b) and r 4(4)(3) must be such as to make out a case for the petitioner. In other words all the material facts must be pleaded though a concise statement of them will suffice. Failure to comply with this mandatory requirement will render the petition defective (see *Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729). The facts that must be pleaded will depend on the election offence alleged to have been committed and the elements that are required to be established in respect of it.

[11] The grounds on which a petition is based must fall within the ambit of s 32 of the Act and in the three complaints in this case it is s 32(c) ('s 32(c)') read with s 10(c) of the Act ('s 10(c)'). They read as follows:

Section 32(c)

32 The election of a candidate at any election shall be declared to be void on an election petition on any of the following grounds only which may be proved to the satisfaction of the Election Judge:

(a) ...

(b) ...

(c) that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate:

s 10(c)

10 The following persons shall be deemed guilty of the offence of bribery:

(a) ...

(b) ...

(c) every person who, before, during or after an election, directly or indirectly, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the election of any person, or the vote of any elector or voter at any election.

[12] The facts to be pleaded by the petitioner in this case would thus be the elements that constitute the offence of bribery within the meaning of s 10(c). Essentially they are governed by the use of the words '… to or for any person in order to induce such person …' in s 10(c). The making of any gift, loan, offer etc '… to or for any person …' means that it must be made to a particular person. The purpose of making the gift, loan, offer etc is determined by the use of the word '… induce … '. It is defined in *Black's Law Dictionary* (6th Ed) as:

> To bring on or about, to affect, cause, to influence to an act or course of conduct, lead by persuasion or reasoning, incite by motives, prevail on.

[13] In *Kalya Singh v Genda Lal* AIR 1975 SC 1634 the Indian Supreme Court said that the dictionary meaning of the word 'induce' is to 'prevail on, persuade' and the gratification offered or promised as inducement must have some connection or reflection, direct or indirect, in persuading the voter to vote or refrain from voting. As Abdoolcader J (as he then was) said in *Re Pengkalan Kota By-Election Teoh Teik Huat v Lim Kean Siew & Anor* [1981] 1 MLJ 265 at p 267:

> … in a corrupt practice such as bribery which is alleged in this case the corrupt intention and corrupt inducement to the electors or voters to vote or refrain from voting must exist. The corrupt practice of bribery which is a criminal offence by statute must be strictly proved beyond all reasonable doubt by clear and unequivocal evidence, and the inducement to vote or refrain from voting must be exercised upon one or more electors or voters who must be identified as the objects to whom it was made or addressed.

[14] In this regard useful reference may be made to s 123(1) of the Indian Representation of the People Act 1951 which is similar to our s 10(c). The section reads as follows:

> 'Bribery', that is to say —
>
> (A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing:
>
> (a) a person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate at an election, or
>
> (b) an elector to vote or refrain from voting at an election, or as a reward to:

A (i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

B **[15]** In commenting on this section *Election Laws, Practice and Procedure* by Rama Devi and Mendiratta says at p 790

> But it should be clearly borne in mind that it is not every gift, offer or promise of gratification to voters which may attract the provisions of s 123(1). In such gift, C offer or promise, there should be an element of bargaining for votes. In other words, any such gift, offer or promise of gratification should be made asking for the votes in return. The Supreme Court held in *Ghasi Ram v Dal Singh* AIR [1968] SC 1191 that an offer or promise not made to any particular voter or voters but to the general body or residents, without distinguishing between those who were favourably inclined and those who were not, was not a corrupt practice. The gist D of the corrupt practice lay in attempting to do something for those who were opposed to the candidate with a view to changing their votes and as a bargain for votes. The apex court reiterated that view in *Om Prabha Jain v Abnash Chand* AIR 1968 SC 1083 and *Dev Raj v Bhagwan Das* AIR 1971 SC 241 and that view still holds the field. But a bargain for the purposes of s 123(1) does not mean that the E candidate makes an offer and the voter accepts it in the sense that he promises to vote. It is enough if the candidate or his agent makes the gift, offer or promise on that condition. If a candidate or his agent pays money to a voter saying that he wants him to vote for him, it is a bargain for the purposes of s 123(1). It is not necessary that the voter should say that he would vote and thereafter the candidate or his agent should pay the money. Even in such a case, the voter after receiving F the money might or might not vote for him the corrupt practice shall be deemed to have been committed (*Iqbal Singh v Gurdas Singh* AIR 1976 SC 27).

[16] It follows that the making of the gift, loan, offer etc must be for the G purpose of changing the mind of the voters who have been identified. This is logical as the question of inducing a person to do something simply cannot arise if he has already decided to do the very thing.

[17] It is now appropriate to consider whether the requirements of H r 4(1)(b) and r 4(4)(3) have been complied with by the appellant. The first complaint which relates to a promise made in return for votes is defective as it does not set out the full text of what the first respondent said. It only identifies a part of it. The part left out could well have neutralised the part that has been pleaded. The second complaint does not state that the gift was I made in return for votes unlike the facts pleaded in the other two complaints.

The third complaint relates to a promise of public action in return for votes made to a crowd of about 300 people in front of the 37 named persons. Such a promise does not amount to a corrupt practice. As Abdoolcader J (as he then was) said in *Re Pengkalan Kota By-Election Teoh Teik Huat v Lim Kean Siew & Anor* [1981] 1 MLJ 265 at p 267:

> The High Court of Punjab held in *Balwant Rai Tayal v Bishan Saroop & Anor* 17 ELR 101, that a candidate can make a promise to Harijans of a locality while canvassing for votes that he would do his best to help them in the matter of retaining an old mosque as a temple and for getting land for building houses and that this does not amount to bribery.

[18] It must be observed that all the three complaints also have a common defect. In the first complaint there is no statement that the 37 persons who have been identified are registered voters. This means that none of the persons to whom the promise was made have been identified. In the case of the second complaint the distribution of the sacks of rice was done in front of the 37 named persons. There is also no statement that the sacks of rice were also given to them. This means that none of the persons to whom the gift was made have been identified. The third complaint merely states that the promise was made in front of the 37 named persons and not to them. Again this means that none of the persons to whom the promise was made have been identified. Thus in all the three complaints the promise or gift, as the case may be, was not made to any particular voter or voters but to a crowd and no distinction was made between the voters who were favourably inclined towards the first respondent and those who were not. In this regard it is necessary to refer to *Ghasi Ram v Dal Singh* AIR 1968 SC 1191 cited in the passage from *Election Laws Practice and Procedure* by Rama Devi and Mendiratta reproduced earlier where Hidayatullah J says at p 1195:

> In *S Mahar Singh v Umrao Singh* AIR 1961 Punj 244 the Punjab High Court held that a candidate making a promise to get the grievances of certain refugees as a body remedied and even getting the Revenue Minister to reinforce his promise was not corrupt practice. It was pointed out that the promise was not made to any particular voter or voters but to the general body of residents without distinguishing between those who were favourably inclined and those not. The gist of the corrupt practice, therefore, lay in attempting to do something for those opposed to the candidate with a view to changing their votes, and as a bargain for votes.

[19] The facts pleaded in respect of the three complaints thus do not disclose the commission of an offence under s 10(c). The result is that they do not comply with the requirements of r 4(1)(b) and r 4(4)(3) as the facts pleaded are insufficient to sustain the prayer.

A **[20]** My learned brothers Richard Malanjum CJSS and Zulkefli Ahmad Makinudin FCJ have read this judgment in draft and agree with it. The appeal is therefore dismissed with costs. Deposit to the respondents.

Appeal dismissed with costs.

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Reported by Andrew Christopher Simon

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